

From: Patrick Hanks <phanks@washingtonpolicy.org>
Sent: Wednesday, November 22, 2023 9:47 AM
To: DES SBCC <sbcc@des.wa.gov>
Subject: Public Testimony for WSEC-Commercial and Residential

External Email

Councilmembers,

I write to notify you of a potential issue I discovered with the Small Business Economic Impact Statement (SBEIS) included in the most recent CR-102s for the WSEC, [Commercial](#) and [Residential](#) not properly complying with the [Regulatory Fairness Act](#).

Components from the SBEIS that are missing or not fully complying with [RCW 19.85.040](#):

- Full analysis of the costs of compliances for businesses. Including: costs of equipment, supplies, labor, professional services, and increased administrative costs (1).
- Full analysis on whether compliance with the rule will cause businesses to lose sales or revenue (1).
- Lack of a comparison of the cost of compliance for small businesses with the cost of compliance for the 10% of businesses that are the largest businesses required to comply with the proposed rules using at least one of the following for comparing costs (1): (a) cost per employee, (b) cost per hour of labor; or (c) cost per one hundred dollars per sales.
- Full analysis of the steps taken to reduce or mitigate costs for small businesses or an explanation why the agency can't reduce costs (2)(a).
- A full description of how the agency involved small businesses in the development of the rule (b).
- A full estimate of the number of jobs that will be created or lost as the result of compliance (d).
- Did not state if the SBCC surveyed a representative sample of affected businesses or trade associations to accurately assess costs (3).

The Governor's Office for Regulatory Innovation & Assistance (ORIA) has [webpage](#) with guidance documents to help agencies in complying with the Regulatory Fairness Act. If you compare the SBEIS Template and Example SBEIS on that webpage, with the SBEIS included in the WSEC CR-102s you will notice a stark difference in the substance of analysis and estimates.

I appreciate that the council did not claim an exemption from completing a SBEIS through [RCW 19.85.061](#). While these amendments are being pursued to comply with the federal Energy Policy and Conservation Act of 1975, they are substantial enough to warrant a full SBEIS so the public and council members can fully weigh the amendments costs and benefits.

Furthermore, according to a [guidance document](#) from the Attorney General's office on the Regulatory Fairness Act, "the failure to conduct a full and complete analysis leaves the rule open to potential challenge."

Initially I thought the full SBEIS was not published in the CR-102s and reached out to council staff for a copy of the full statement as directed so by the CR-102. Council staff informed me the full statement was included in the SBEIS.

Additionally, while it may not be required by statute (to my knowledge) I believe it would improve transparency if you included the actual minor cost estimate that was used in the [ORIA Minor-Cost Threshold Calculator](#) to get the minor cost thresholds for the list of industries.

I ask the council to confer with your staff and legal experts to investigate this matter further and take the necessary action to comply with RCW 19.85.040.

Respectfully,
Patrick Hanks



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